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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 470

AMERICAN POWER & LIGHT COMPANY, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The opinion of the Commission rendered December 28, 1943, the order of the same date (R. 8–12), and the order dated January 12, 1944 (R. 12–13), denying the petitioner's application for rehearing, have not yet been officially reported but have been published as Holding Company Act Releases Nos. 4791, 4824 (containing corrections), and 4825 (denying rehearing).[1] The opinion of

[1] Copies of the findings and opinion of the Commission as corrected are lodged with the Clerk of this Court. A supplemental order dated January 11, 1944, published as Holding Company Act Release No. 4828, was not challenged in the court below.

the Circuit Court of Appeals for the First Circuit is reported at 143 F. (2d) 250.

JURISDICTION

The decree of the circuit court of appeals dismissing the petition for review was entered on June 19, 1944 (R. 26). The petition for a writ of certiorari was filed on September 16, 1944, and granted on November 13, 1944 (R. 26). The jurisdiction of this Court is invoked under Section 24 (a) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 834–835, 15 U. S. C. 79x (a)), and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTE INVOLVED

The portions of respondent's order which petitioner seeks to have reviewed were entered under Sections 15 (f) and 20 (a) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 15 U. S. C. 79, herein referred to as the "Act"). The text of these provisions is set forth in the Appendix, *infra*, pp. 28–30. Section 24 (a) of the Act provides in pertinent part:

> Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by

filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. * * *

QUESTION PRESENTED

Whether a sole stockholder of a company ordered by the Commission to effect accounting adjustments by means of charges to earned surplus is a person "aggrieved" by such order within the meaning of Section 24 (a) of the Holding Company Act and is entitled as such to file an independent petition for review of such order.

STATEMENT

The petitioner, American Power & Light Company, incorporated in the State of Maine, is a subsidiary holding company in the Electric Bond and Share holding-company system and is itself a registered holding company. It is now, and was at the time of filing the petition for review, the sole stockholder of Florida Power & Light Com-

pany, which is an electric and gas utility company incorporated in and operating exclusively in Florida.[2]

The order under review was entered in administrative proceedings in which there were consolidated, for purpose of hearing, issues raised by the Commission as to whether it was necessary for Florida to effect changes in its accounts and security structure under applicable provisions of the Act, with proposals of Florida and American to meet those issues by what petitioner has characterized as a "financial reorganization" (R. 1–2, 8–9). The steps proposed by Florida and American and approved by the Commission include the elimination of "write-ups" in the accounts of Florida, capital contributions by American to Florida through surrender of certain debt securities and preferred stocks of Florida held by American, and the issuance and sale to the public of new bonds, debentures, and notes of Florida to "refund" the then outstanding publicly held bonds and preferred stocks of Florida (R. 10–11). While these proposals met in a manner satisfactory to the Commission most of the issues which it had raised, there remained a dispute as to the necessity of Florida's making certain additional accounting adjustments. The particular paragraphs of the Commission's order under review,

[2] Petitioner and the above-mentioned associate companies are hereinafter referred to, respectively, as American, Bond and Share, and Florida.

requiring such additional accounting adjustments provide that (R. 10–11):

> (2) It is Further Ordered that Florida Power & Light Company shall classify in Account 107 and eliminate from the plant account by charge to earned surplus not later than December 31, 1944, an amount of $1,815,655 consisting of capitalized intra-system profits paid to affiliated companies as construction and engineering fees;[3]
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> * * * * *
>
> (4) It is Further Ordered that pending final determination of the amount and disposition to be made of Account 100.5 items presently in the plant account of Florida, Florida shall annually beginning with the calendar year 1944 appropriate out of earned surplus to a contingency reserve at least $700,000, such act of appropriation to be without prejudice, however, to respondents' right to contest the validity of any definitive order with respect to such items as may ultimately be issued;[4]

Paragraph 5 of the order (R. 11) makes these provisions severable from the remaining paragraphs of the order, and compliance therewith is ex-

[3] "'Write-ups' and other elements of book value which are deemed illegitimate" are placed in Account 107. Kripke, *A Case Study in the Relationship of Law and Accounting: Uniform Accounts 100.5 and 107* (1944), 57 Harv. L. Rev. 433, 436.

[4] "The difference between the cost to the accounting utility of property acquired as an operating unit or system and original cost less depreciation" is placed in Account 100.5. *Ibid.*

pressly stated not to be a condition to the granting of the applications of American and Florida to take the other action contemplated.

On February 5, 1944, after consumation of the "reorganization", American filed its petition in the Circuit Court of Appeals for the First Circuit seeking to set aside paragraphs 2 and 4 of the order of December 28, 1943 (R. 1). On February 24, 1944, the Commission filed its motion to dismiss the petition, pointing out that "the Commission does not challenge the right of petitioner's subsidiary Florida Power & Light Company to seek review of this order, which is specifically directed to it", and that "we have given notice of our motion to petitioner in ample time for it to cause its subsidiary to file its petition for review in an appropriate circuit" (R. 14).[5] On February 25, 1944, Florida filed its petition for review in the United States Circuit Court of Appeals for the Fifth Circuit. It challenged the same paragraphs of the Commission's order which American seeks to have set aside (R. 14, 19–20).

On June 19, 1944, the court below dismissed American's petition for review (R. 26).

SUMMARY OF ARGUMENT

American's only interest in the order under review is derivative; its interest derives from its

[5] The venue provisions of Section 24 (a) limit Florida to filing a petition for review either in the United States Court of Appeals for the District of Columbia or in the Circuit Court of Appeals for the Fifth Circuit.

holdings in Florida against whom alone the order is directed. In dismissing American's petition, the court below applied the well-settled principle of corporate law that, absent special considerations making it inequitable that a stockholder be concluded by the action or inaction of the management, corporate litigation may be conducted only by and in the name of the corporation. No special equitable considerations are present here since American, as Florida's stockholder, has complete control over the management of Florida and thus has the power to cause Florida to seek review and to control the conduct of any litigation by which Florida may seek to challenge the order. To hold that a parent holding company may nevertheless file a petition to review an order directly affecting its subsidiary would circumvent venue restrictions imposed by the statute.

American urges that an order affecting the earned surplus of Florida, and consequently its ability to pay dividends, creates a conflict of interest between the corporation as such and its stockholders which gives any stockholder a special standing to attack such order. But at least in the case of American, which is a sole stockholder, there can be no such conflict. The right to and interest in judicial review is Florida's and only Florida may assert it.

American's contention that the statutory provision for review of Commission orders by "any person or party aggrieved" gives a stockholder an

independent standing to petition for review without regard to the traditional limitations upon the conduct of corporate litigation, is without basis in the statute and would contravene the venue provisions thereof. Equally without basis is American's position that, whether or not otherwise "aggrieved," it acquired standing to seek review of this order by virtue of its standing as a party to the administration proceeding in which the order was entered. Participation before the Commission by virtue of a flexible administrative procedure cannot operate to enlarge the jurisdiction of a reviewing court, especially when American was a necessary party only for the determination of issues which are unrelated to the provisions of the order now challenged.

ARGUMENT

I

AMERICAN'S SOLE INTEREST IN THE ORDER UNDER REVIEW IS DERIVATIVE

The order under review requires Florida, and Florida alone, to make changes in its accounts. The order neither requires nor prohibits action by American. American is not even mentioned in the paragraphs of the order sought to be reviewed. The only relief which petitioner seeks is that Florida, not American, be relieved of restraints imposed by the order. An order of a reviewing court which did not relieve Florida of its obligation to comply with the order could not have any

effect upon the "interest" which American seeks to assert. Thus the petition is derivative both in the sense that American's interest in the order derives solely from its stock interest in Florida and in that the relief sought is relief on behalf of Florida from restrictions otherwise applicable to it. See 13 Fletcher, *Corporations* (1943), secs. 5911–5915.

The order under review does not deal with the rights of classes of stockholders, *inter sese*, as does an order approving, for example, a plan of reorganization or recapitalization. If such an order were involved, we would not question the standing of even a controlling stockholder to seek review. Thus the Commission did not challenge the status of Chenery Corporation, a parent holding company, and other interests affiliated with the management of Federal Water Service Corporation to challenge an order treating their stockholdings as a special class for purposes of participation in a plan. See *S. E. C.* v. *Chenery Corporation*, 318 U. S. 80. Nor does the Commission question the standing of minority stockholders to object to the treatment of their class in a reorganization.*

* Where the district court enforcement procedure under Section 11 (e) is applicable, the appropriate procedure is that followed in *Otis & Co.* v. *S. E. C.*, No. 81, decided January 29, 1945, wherein the objecting stockholder challenged the plan in a district court and appealed from the district court's order approving and enforcing the plan. See *Okin* v. *S. E. C.*, 145 F. 2d 206 (C. C. A. 2), dismissing a petition to review filed in a circuit court of appeals while the district court's enforcement proceeding was in progress.

Cases in which the Commission has not challenged the standing of security holders or their representatives to attack orders affecting the rights of security holders, *inter sese*, or involving charges of fraud against the management are: *Lawless* v. *S. E. C.*, 105 F. 2d 574 (C. C. A. 1); *New York Trust Company* v. *S. E. C.*, 131 F. 2d 274 (C. C. A. 2), certiorari denied, 318 U. S. 786; *City National Bank & Trust Co.* v. *S. E. C.*, 134 F. 2d 65 (C. C. A. 7); *Okin* v. *S. E. C.*, 137 F. 2d 398 (C. C. A. 2).[7] It is not disputed, however, that the instant order is one which does not deal with the rights of security holders, *inter sese;* nor, of course, is there any charge of fraud or breach of duty on the part of Florida. Under these circumstances it is clear that the injury feared by petitioner is only "the indirect harm which may result to every stockholder from harm to the corporation." See *Pittsburgh & West Virginia Railway Company* v. *United States*, 281 U. S. 479, 487.

American urges that there is a conflict of interest between Florida as a corporation and American as its stockholder with respect to the order (Br. 8-10, 15), and that relief may be foreclosed entirely in the event that Florida is held to have no standing to petition for review (Br.

[7] *Todd* v. *S. E. C.*, 137 F. 2d 475 (C. C. A. 6), may be regarded as a borderline case. However, the Commission did not question the minority stockholder's standing to seek review of a dissolution order issued pursuant to Section 11 (b) (2) and not challenged by the company.

16). We submit that any conflict of interest between Florida and its sole stockholder is an imaginary one both in law and in fact, and that it is perfectly clear that Florida may invoke judicial review. As a practical matter, American, as the sole stockholder, can direct and has directed Florida to challenge the order to "*retain* money as against its stockholder" (Br. 10), even though the order is assumed by petitioner to be favorable to Florida and injurious to it.

In law, likewise, it is clear that Florida has as much interest as American in upsetting the Commission's order and is fully competent to assert any objections to that order which could be validly urged by its stockholder. Obviously, the right of the corporation to pay dividends is an important right susceptible of judicial protection, at the insistence of the corporation, against administrative restraint that can be shown to be arbitrary or in excess of statutory power. This Court has repeatedly reviewed accounting orders and accounting regulations at the instance of complaining corporations directly affected, without raising any question as to the competence of such corporations to bring suit. See, e. g., *American Tel. & Tel. Co.* v. *United States*, 299 U. S. 232; *Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134. The order reviewed in the *American Tel. & Tel. Co.* case contained provisions of the same general character as the order under review in the present instance. But what American

appears to be seeking is a putative rhetorical advantage which might flow from focussing attention upon the impact of the order upon the stockholder as a potential recipient of dividends, rather than upon the corporation which might otherwise be the payor of dividends. By a process of reasoning which both utilizes, and at the same time ignores, the corporate fiction, American would have it appear that it is being deprived of dividends for the benefit of some completely unrelated entity. But whether the order is challenged by American or by Florida it must stand or fall upon the power of the Commission to require the accounting entries in question under the appropriate provisions of the Holding Company Act. The extent of the Commission's power cannot vary, depending on whether a challenge to the order comes from Florida as a potential declarant of dividends or from American as a potential recipient of such dividends.[8]

Thus, whether or not the order under review necessarily operates as a restriction on Florida's power to declare and pay dividends,[9] Florida is

[8] As we suggested in our brief in opposition to the granting of the writ (p. 17), denial of American's standing to file an independent petition in the First Circuit would not necessarily deprive it of an opportunity of joining by intervention in the proceeding for review instituted by Florida in the Fifth Circuit.

[9] It is common practice for a growing utility company to retain part of its earnings for reinvestment in the business and it may well be that the charges to earned surplus re-

fully competent to challenge it directly and American has shown no need for any independent standing to challenge the order, and no interest in the order other than such as derives from its position as a stockholder of American.[10]

NY Pa NJ Utilities Co. v. *Public Service Commission of New York*, 23 F. Supp. 313 (S. D. N. Y.), squarely supports the view that the right

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quired by the Commission's order—whatever their effect on the legal power of Florida to pay dividends (see Rule U–46, Appendix, *infra*, p. 30)—will not in fact result in the retention of funds which, apart from the order, its management would distribute. Cf. *Report of the Public Utilities Division, S. E. C., Financial Statistics for Electric and Gas Subsidiaries of Registered Public-Utility Holding Companies, 1943*, p. 1. It should be noted, moreover, that American's ultimate equity increases in direct proportion to the extent that net earnings are retained by Florida.

[10] Petitioner is not satisfied by disclaimers on the Commission's part as to lack of any intention to challenge Florida's standing to attack the order, but professes to fear objections which the court might raise on its own motion. In that connection, it refers to a colloquy with one of the Justices, which occurred in the course of the argument in *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119. In that case, American, which had been permitted by the Federal Power Commission to intervene in a proceeding involving the accounts of its subsidiary, joined in its subsidiary's petition for review. Pursuant to the venue requirements of the Federal Power Act, that petition was necessarily filed in the circuit appropriate for the subsidiary and no question could arise as to the parent company's independent status to seek review in another circuit. The ultimate disposition of the case indicates that the real difficulty with petitioners' argument in that case was its inherent lack of substance irrespective of whether it might be conceived of as the complaint of the accounting company or that of its holding company.

which American here asserts is purely derivative. In dismissing the complaint of the beneficial owner of all the stock of an operating company upon which the Public Service Commission had imposed a dividend restriction, Judge Coxe said (p. 314):

> The sole object of the action is to remove the dividend restriction imposed by the Commission upon the Rochester Company; that, in effect, is the only relief asked in the complaint, and the real purpose of the suit. * * * the only interest the plaintiff now has in seeking its removal is as a holder of voting trust certificates representing stock in the company. I think it is plain, therefore, that the plaintiff is suing in the right of the corporation, and that the action is derivative.

II

THE STATUTORY PROVISION FOR REVIEW OF COMMISSION ORDERS BY "ANY PERSON OR PARTY AGGRIEVED" DOES NOT SET ASIDE TRADITIONAL LIMITATIONS ON THE CONDUCT OF CORPORATE LITIGATION

The term "person aggrieved" or some similar phrase is used to describe persons entitled to seek review of administrative orders in many federal statutes other than the Public Utility Holding Company Act of 1935.[11] Under none of these

[11] See Communications Act of 1934, 48 Stat. 1093, sec. 402 (b) (2), 47 U. S. C. 402 (b) (2); National Labor Relations Act, 49 Stat. 455, sec. 10 (f), 29 U. S. C. 160 (f); Securities.

statutes has it been held that the "person aggrieved" test gives stockholders of a company directly affected by an administrative order a standing to sue without regard to the traditional limitations applicable to the conduct of corporate litigation. Cf. *Price* v. *Gurney*, No. 410, decided February 5, 1945.

Petitioner apparently argues that the "person aggrieved" language should be construed as requiring the reviewing court, contrary to well-settled principles of corporate law, to take cognizance of the indirect injury to stockholders resulting from any injury to a corporation and to treat each stockholder as thereby necessarily "aggrieved" for purposes of filing a petition to review. Thus it is the "substantial adverse economic effect on American" rather than the invasion of its legal rights which petitioner emphasizes; and, in asserting that the question of whether it is "aggrieved" is not even debatable, American urges "this would be true even if Amer-

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Act of 1933, 48 Stat. 80, sec. 9 (a), 15 U. S. C. 77i; Trust Indenture Act (1939), 53 Stat. 1175, sec. 322 (a), 15 U. S. C. 77 vvv (a); Securities Exchange Act, 48 Stat. 901, sec. 25 (a), 15 U. S. C. 78y (a); Investment Company Act (1940), 54 Stat. 844, sec. 43 (a), 15 U. S. C. 80a–42 (a); Investment Advisers Act (1940), 54 Stat. 855, sec. 213 (a), 15 U. S. C. 80b–13 (a); Fair Labor Standards Act, 52 Stat. 1065, sec. 10 (a), 29 U. S. C. 210 (a); Railroad Retirement Act of 1937, 50 Stat. 315, sec. 11, 45 U. S. C. 228k; Natural Gas Act, 52 Stat. 831, sec. 19 (b), 15 U. S. C. 717r (b); and Federal Power Act, 49 Stat. 860, sec. 313 (b), 16 U. S. C. 8251 (b).

ican suffered no injury from the Commission's order other than through the effect of the order on Florida, of which American is the sole stockholder" (Br. 8). The consequences upon acceptance of this argument are discussed more fully in the brief for the Commission (pp. 18–28) in *Securities and Exchange Commission* v. *Okin*, No. 815, this Term. It is our view that the term "person aggrieved" contains no specific indication of congressional intention with respect to standing to sue, but indicates a deliberate intention on the part of Congress to leave this problem to the reviewing courts, to be determined in the light of traditional legal principles as well as the overall policy of the particular statute in question.

We do not, of course, question that the term "person aggrieved" has been construed, in the context of particular statutes, as giving certain persons economically affected by administrative orders but whose private substantive rights were not deemed to have been invaded thereby, standing to seek judicial review of those orders for the purpose of vindicating public interests in conformity with the applicable statutory standard. Petitioner has cited in that connection *Federal Communications Commission* v. *Sanders Radio Station*, 309 U. S. 470; *Federal Communications Commission* v. *National Broadcasting Company*, 319 U. S. 239; and *Associated Industries, Inc.* v. *Ickes*, 134 F. 2d 694 (C. C. A. 2), dismissed

as moot pursuant to remand by this Court, 320 U. S. 707. But these are cases where the particular economic interest asserted could have no other private representation if the petitioner in question did not have standing to challenge the order. In the cases under the Communications Act, the lack of legal interest flowed from the substantive policy of the statute which does not permit broadcasters to acquire vested rights in the use of particular wave lengths. But the statutory provisions for judicial review would have been virtually meaningless unless the economic interests most seriously concerned were held to have standing to challenge orders of the regulatory Commission.[12] The *As-*

[12] The cases may rest on an interpretation of the statute as conferring on the broadcasting industry, in its use of facilities of communication not susceptible of private appropriation, a substantive right to be protected against arbitrary and discriminatory treatment by governmental authority. Thus, under the Communications Act, Congress has merely made applicable procedurally, if not substantively, the concept that a public utility company may have standing to challenge the granting of a license to a competitor. See *Alton R. Co.* v. *United States*, 315 U. S. 15, 18–20; *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U. S. 382, 390. Assuming that no private substantive right can be conceived of as existing under these circumstances, the explanation may be that the statute should be construed as conferring upon the private interests most directly affected the status of a "private Attorney General." See *Associated Industries, Inc.* v. *Ickes*, 134 F. 2d 694, 704. Where, however, the regulatory scheme, while based on public interest standards, is one to regulate private investment interests, it is not lightly to be assumed that Congress intended to vest standing to sue in the public interest in any person other than the designated

sociated Industries case merely involved the problem of whether the publicly appointed "Consumers' Counsel" should be deemed the exclusive representative of consumers' interests for the purpose of challenging minimum price orders. None of these cases construed the concept of "aggrieved" as applicable to a stockholder's interest in corporate rights, nor did they involve the problem of whether the statute in question was intended to permit stockholders to displace, or compete with, the corporation and its management for the purpose of challenging administrative orders directly affecting the company.

The ultimate question presented here is whether there is anything in the purposes of the Public Utility Holding Company Act which requires such an unprecedented result, particularly in the case of a controlling stockholder. We believe that there is no basis in the Act for such a result, and, moreover, that it would have the effect of circumventing the venue provisions of the Act. It may be helpful before examining the problem in the specific context of the venue provisions of the Holding Company Act to review the reasons

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administrative agency. Certainly it would be difficult to construe the statute as conferring such a standing upon parent holding companies in respect of orders affecting their subsidiaries when the subsidiaries have a conventional legal interest in challenging such orders. Nor does petitioner attempt to invoke public interest standards as a basis for challenging the Commission's action.

for the traditional limitations upon conduct of corporate litigation by stockholders. In the first place it should be noted that what is involved is a basic and well-settled principle of corporation law which applies in the absence of some affirmative justification for creating exceptions to the rule. The rule has been compactly stated by a leading text writer:

> Contrast the law of corporations with respect to suits against, or by, strangers. It is very simple. Rights are in the corporation, not in its members, so that it, not they, is the party plaintiff. And obligations are against the corporation, not its members, so that it, not they, is the party defendant. [See Warren, *Corporate Advantages without Incorporation*, p. 23.]

Departure from the rule has been permitted only upon special equitable grounds and these equitable grounds have been based exclusively upon the necessity of protecting minority, rather than controlling, stockholders against abuse of managerial powers.[13] Like the instances where courts "pierce the veil of corporate entity" or disregard the "corporate fiction", the purpose of the rule is to prevent abuse of corporate devices or corporate powers, not to permit those in control of the corporation to assume, alternatively, the corporate or individual personality to suit their own

[13] See McLaughlin, *Capacity of Plaintiff-Stockholder to Terminate a Stockholder's Suit* (1936), 46 Yale L. J. 421, 423.

convenience."[14] And the fact that the stockholder owns all of the corporate stock makes for no different treatment. See *Button* v. *Hoffman*, 61 Wis. 20.

The policy which precludes those in control of the corporation from bringing suit in its behalf has found expression principally in decisions which have thwarted collusive efforts by those aligned in interest with the management to use the device of a derivative stockholder's suit to circumvent limitations which would be applicable to the corporation itself. A conspicuous example has been the attempt to create diversity of citizenship for purposes of suits in the federal courts, as described in *Hawes* v. *Oakland*, 104 U. S. 450, 452. This practice appears to have been the occasion for the enactment, in the same year as that decision, of former Equity Rule 94, which is the predecessor of Rule 23 (b) of the Rules of Civil Procedure. See 104 U. S. IX. Since that rule requires exhaustion of the corporate remedy by making a demand on the management or a showing that demand would be futile, it clearly precludes suit by a controlling stockholder.

The same considerations are applicable to attempts by parent holding companies, in their ca-

[14] Wormser has characterized stockholders' suits for mismanagement, as well as suits dealing with their rights *inter sese*, as an aspect of disregard of the concept of corporate entity but one in which the disregard is "incidental rather than fundamental." Wormser, *The Disregard of the Corporate Fiction and Allied Corporate Problems*, p. 78.

pacity as stockholders, to seek review of administrative orders affecting their subsidiaries in circuit courts of appeals to which their subsidiaries could not directly resort. The venue provisions of Section 24 (a) permit the filing of a petition for review, at the election of the petitioner, in either the Court of Appeals for the District of Columbia or in any circuit wherein the petitioner "resides or has his principal place of business." Petitioner as a Maine corporation filed its petition in the First Circuit, whereas Florida was limited by the statute to filing either in the Fifth Circuit or the District of Columbia. If petitioner is right in contending that the economic interest of a stockholder is sufficient to give standing to sue, there is no reason for stopping at the immediate parent of the corporation directly affected by an administrative order, and here petitioner's parent, Electric Bond and Share Company, which is a New York company, would have the further choice of petitioning for review in the Second Circuit. Indeed, if stockholders may petition for review, it would normally be possible to find a stockholder friendly to the management residing within the jurisdiction of any one of the ten circuit courts of appeals. It would be strange indeed if a statute primarily directed at the elimination of abuses in connection with the holding company device were to be construed as permitting parent holding companies to transcend

traditional limitations of corporate law which would otherwise preclude such choice.[18]

It is no answer to suggest, as petitioner does (Br. 17), that the Commission could file the transcript of record with the circuit court of appeals for the circuit of residence of the company principally affected, here the Fifth Circuit. Were the stockholder's standing to petition clear, it might well be that the corporation would never file an independent petition and thus never give the Commission an opportunity to file the transcript with the circuit court of appeals of the corporation's residence. Indeed, in this case, Florida did not file its petition until after the Commission filed its motion to dismiss American's petition in the First Circuit. Nor is it to be assumed that Congress could have intended to encourage, without substantial reason therefor, the filing of separate petitions in different circuits to review the same administrative order. While it is true that the cases cited by petitioner (Br. 18) do indicate that practical solutions have been reached in a number of cases where there have

[18] It may be significant that there are precedents adverse to petitioner's position in the courts of appeals to which Florida is entitled to resort. *Alabama Power Co.* v. *Federal Power Commission*, 134 F. 2d 602 (C. C. A. 5); *Alabama Power Co.* v. *Federal Power Commission*, 136 F. 2d 929 (C. C. A. 5); *Alabama Power Co.* v. *McNinch*, 94 F. 2d 601 (App. D. C.); *Alabama Power Co.* v. *Federal Power Commission*, 128 F. 2d 280 (App. D. C.), certiorari denied, 317 U. S. 652.

been dual filings, the procedure involved is at best a cumbersome one and at worst may give rise to jurisdictional controversies and disputes unrelated to the merits of the order under review.

Petitioner's theory as to the meaning of "person aggrieved" would permit of no limitation whatever on the circumstances under which minority stockholders might sue to challenge administrative action affecting their companies. Cf. *Securities and Exchange Commission* v. *Okin*, No. 815, to be argued immediately after this case. Its contention that economic interest (as ascertained by piercing the corporate veil) is enough to constitute a stockholder a "person aggrieved" would, of course, apply to minority stockholders as well as to controlling stockholders, and in its application to minority stockholders would likewise transcend traditional limitations on the conduct of corporate litigation. Thus petitioner's theory would permit minority stockholders to file independent petitions to review administrative orders even in cases where the management has caused a petition to be filed in the name of the corporation. It would also give unrestricted standing to sue to minority stockholders who happened to disagree with the management's decision not to litigate with respect to a particular order. As we show in our brief in the *Okin* case (No. 815), the application to petitions for review of the rules otherwise applicable to derivative actions would be in accordance with the traditional

policy under which courts have refused to concern themselves with disputes over mere differences as to managerial policy.[16] But even if this Court should agree with the holding of the Second Circuit in the *Okin* case, that court, in *Okin* v. *Securities and Exchange Commission*, 143 F. 2d 943, indicated its own concurrence in the holding of the First Circuit in the instant case, and, whatever reasons might prompt extension of standing to sue to minority stockholders would not apply to a controlling stockholder.

III

PETITIONER'S STATUS AS A PARTY TO THE CONSOLIDATED PROCEEDING IN WHICH THE ORDER UNDER REVIEW WAS ENTERED DOES NOT GIVE IT STANDING TO PETITION FOR REVIEW

The petitioner makes some point of the fact that American was a party to the proceeding before the Commission and derives from this a right to petition for review (Br. 9). We agree, of course, that anyone entitled of right to be heard before the Commission is entitled to review if he is aggrieved. However, administrative procedure is flexible. There is no provision in the statute

[16] As we conceded in our brief in opposition (p. 12) we do not question that "the term 'person aggrieved' is broad enough to include the economic interest of a stockholder as a 'person aggrieved' by an order affecting his company wherever the circumstances are such as to make it inequitable that the stockholder be bound by the action or inaction of the management."

which required that American be made a party to a proceeding affecting only the accounts of one of its subsidiary companies.[17] The Commission's exercise of its discretion to permit any person to become a party whose participation it believes would or might be helpful to it can have no effect upon whether persons thus permitted to participate can be "a person or party aggrieved". The Commission has no power to enlarge or circumscribe the jurisdiction of the reviewing court by the exercise of such discretion.

In the present case, the order appealed from was entered in a general proceeding for securing compliance with the Act by a segment of the Bond and Share system. Had there been a separate proceeding for purposes of the particular sections of the order under review, there would have been no occasion for the Commission to name American a party. It did not take affirmative action to

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[17] Section 19 provides in part:

> In any proceeding before the Commission, the Commission * * * may admit as a party any representative of * * * security holders or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

Even if this language should be construed as not conferring an unlimited discretion on the Commission to exclude participation, it could scarcely be regarded as an abuse of Commission discretion to exclude from separate participation the person in control of the corporation directly affected by the proceeding and whose interests are therefore adequately represented by its management.

eliminate as parties either American or Bond and Share because these companies were necessary parties to other aspects of the transaction under consideration and approved or required in the same order as the provisions now objected to by American. Under the circumstances, the fact that American was a party did not constitute even an administrative determination that American had any standing to object to the accounting provisions of the order. The mere fact that a stockholder is a party does not of itself entitle the stockholder to institute an independent suit to set aside the Commission's order. This is clear from the case of *Pittsburgh & West Virginia Ry. Co.* v. *United States*, 281 U. S. 479. There, the petitioner, a minority stockholder of the Wheeling & Lake Erie Railroad, sought, under the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 219–20, to set aside an order of the Interstate Commerce Commission approving an application made by the company. This Court said (p. 486):

> The mere fact that appellant was permitted to intervene before the Commission does not entitle it to institute an independent suit to set aside the Commission's order in the absence of resulting actual or threatened legal injury to it.

See also *Alexander Sprunt & Son, Inc.* v. *United States*, 281 U. S. 249, 255; *Boston Tow Boat Co.* v. *United States*, 321 U. S. 632, 633–634.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be affirmed.

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MARCH 1945.

APPENDIX

The Public Utility Holding Company Act of 1935, Act of August 26, 1935, c. 687, title I, 49 Stat. 803 (15 U. S. C. 79), provides:

Section 12 (c):

> It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

Section 15 (f):

> All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the

account or accounts in which particular outlays, receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

Section 20 (a):

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this title, including rules and regulations defining accounting, technical, and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-

recurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of separate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

Rule U–46, promulgated by the Commission under Section 12 (c), provides, in pertinent part:

> (a) *Dividends.*—No registered holding company or subsidiary thereof shall declare or pay any dividend on any security of such company out of capital or unearned surplus, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in Rule U–23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

U. S. GOVERNMENT PRINTING OFFICE: 1949

SUPREME COURT OF THE UNITED STATES.

Nos. 470, 815.—October Term, 1944.

American Power & Light Company, Petitioner, 470 *vs.* Securities and Exchange Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.
Securities and Exchange Commission, Petitioner, 815 *vs.* Samuel Okin.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[June 4, 1945.]

Mr. Justice Roberts delivered the opinion of the Court.

We granted certiorari in these cases because of an apparent conflict in the decisions below[1] concerning the application of § 24 (a) of the Public Utility Holding Company Act,[2] which provides that "any person or party aggrieved by an order issued by the Commission" under the Act may obtain a review of the order by the Circuit Court of Appeals of the circuit of his residence or principal place of business. The difference of view is as to the scope of the phrase "person or party aggrieved."

In No. 470 it appears that the petitioner is a registered holding company and owns all the common stock of the Florida Power & Light Company. The paragraphs of the order in controversy require Florida to make certain accounting entries which will result in taking out of surplus moneys which would otherwise be available to pay dividends to petitioner. The order including these paragraphs was made as the result of proceedings before the Commission to which American and Florida were parties, and in which American participated; and the provisions in controversy appear to have been drawn with a view that they might be contested apart from other matters before the Commission, and to have included statements to the effect that they were made

[1] American Power & Light Co. *v.* Securities and Exchange Commission, 143 F. 2d 250; Okin *v.* Securities and Exchange Commission, 143 F. 2d 945.

[2] 15 U. S. C. 79x.

without prejudice to the rights of American and Florida to contest them.

American petitioned the court below to set aside the order. Later Florida petitioned another Circuit Court of Appeals to set aside the same paragraph attacked by American. The Commission moved to dismiss American's petition, reciting the fact that Florida had instituted a similar proceeding, and asserting that American, as sole stockholder, had no standing to seek review of the order.

In No. 815 it appears that Electric Bond & Share Company, a registered holding company, loaned $35,000,000 to a subsidiary, American and Foreign Power Company, which is also a registered holding company, and that the question of how this loan should be refinanced became the subject of a proceeding before the Commission.

The respondent Okin, as the owner of 9,000 out of a total of some 5,250,000 common shares of Electric Bond and Share, was allowed to participate in the proceeding, and opposed a proposition which the two companies submitted for method of refinancing the loan. The Commission made an order approving the proposal; and Okin thereupon petitioned the court below to review the order. The gist of his complaint was that the refinancing as approved would reduce the value of his stock by reducing the interest income of Electric Bond and Share.

The Commission, before filing a certified copy of the transcript of the record upon which the order complained of was entered, moved to dismiss Okin's petition upon two grounds. The first was that, within the meaning of § 24(a) Okin was not a person or party aggrieved. The second was that his objection to the order was frivolous. In response to this the court said that, while it might well be that Okin's attack lacked merit, if it did the result should be an affirmance of the order rather than a dismissal of the proceeding, and that jurisdiction to consider the merits was lacking in the absence of a transcript of the proceedings before the Commission. The motion was accordingly denied.

The Commission alleges that subsequently it filed a motion to dismiss or affirm, after having filed an abbreviated transcript containing so much of the record as was relied on for the purposes of the motion, and that this motion was denied without

opinion. The record shows that a motion to dismiss or affirm was denied without opinion.

The Commission asks us to review both denials. The respondent insists we lack jurisdiction so to do, for the reason that neither order is final.

First. We hold that a stockholder having a substantial financial or economic interest distinct from that of the corporation which is directly and adversely affected by an order of the Commission, irrespective of any effect the order may have on the corporation, is a "person aggrieved" within the meaning of Section 24(a).

The Commission does not question that American, as sole stockholder of Florida, has a substantial economic interest which is affected by the order; nor does it maintain that the term "person aggrieved" is not broad enough to include one whose economic interest is affected by an order affecting his company under circumstances which make it inequitable that he be bound by the action or inaction of the management. It insists, however, that American's application for review in the court below was in the nature of a derivative action, commonly designated a stockholder's suit, to redress a wrong to his corporation. In this view, the Commission urges that, as Florida has itself sought a review of the order, it must be presumed that Florida will endeavor to protect the interest of its sole stockholder, American, and that American has consequently failed to show any necessity for its representing the interests of Florida.

The difficulty with this contention is that the action of the Commission in ordering the transfer of an item from surplus account to another account where the item will not be available for the payment of dividends does not deprive the corporation of any asset or adversely affect the conduct of its business in the manner it affects the petitioner, whereas the order has a direct adverse affect upon American as a stockholder entitled to dividends. It was because the court below overlooked this difference that it found support for its decision in *Pittsburgh & West Virginia Railway Co.* v. *United States*, 281 U. S. 479. That was a suit brought under the Urgent Deficiencies Act to set aside an order of the Interstate Commerce Commission addressed to a carrier other than the plaintiff in the suit. The plaintiff was a minority stockholder of the carrier affected. This court pointed

out that, under the accepted doctrine, the plaintiff had no standing to sue since in attempting to do so it was merely seeking in a derivative capacity, to vindicate the rights of the corporation.

In awarding a review of an administrative proceeding Congress has power to formulate the conditions under which resort to the courts may be had.[3] The persons accorded a right to obtain review are, therefore, to be ascertained from the terms of the statute. Congress might here have provided that only parties to the administrative proceeding should have standing to obtain court review. When the bill which became the Public Utility Holding Company Act was introduced in the houses of Congress it provided that "any person aggrieved by an order issued by the Commission in a proceeding under this title *to which such person is a party* may obtain a review of such order."[4] The provision was altered so as to read as it is now found in the statute. There seems to be no reason not to accord the statutory language its natural meaning in a case such as this, where the considerations which would move the corporation to seek review differ from those which may be relevant to the stockholder's interests. There may be situations in which the two interests are the same and where consequently the grievance ought not to support two proceedings identical in character. This, however, is not such a case; for it is possible that without any legal wrong to stockholders the corporation may elect not to prosecute, or to abandon, a proceeding for review.

This court has not allowed the usual criteria of standing to sue to deny persons who, in analogous cases under that doctrine, would ordinarily not be permitted to invoke court review, the benefit of such review under statutes embodying the same language as § 24(a).[5] The same is true of the lower federal courts.[6] In these instances the extension of the privilege to persons aggrieved was held to extend it to those not technically parties, and, therefore, not entitled, without the statutory provision, to initiate litigation in a court.

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[3] Federal Power Comm. v. Pacific Power & Light Co., 307 U. S. 156, 159.

[4] Senate Bill No. 1725, 74th Cong., 1st Sess., § 24(a); House Resolution No. 5423, 74th Cong., 1st Sess., § 23(a).

[5] Interstate Commerce Commission v. Oregon-Washington R. & N. Co., 288 U. S. 14 (the Interstate Commerce Act); Federal Communications Comm. v. Sanders Bros. Radio Station, 309 U. S. 470 (Communications Act); cf. L. Singer & Sons. v. Union Pac. Ry. Co., 311 U. S. 295.

[6] Associated Industries v. Ickes, 134 F. 2d 694 (the Bituminous Coal Act).

While the matter was not specifically mooted, it would seem that, until the instant cases, both the Commission and the courts have been of the view that persons situated as are the stockholders in these cases were given the statutory right to apply for review of a Commission order. In Circuit Courts of Appeals, and in this court, stockholders have been heard upon the merits of orders made against corporations by the Securities and Exchange Commission.[7]

The further suggestion is made that to permit stockholders to resort to court review would create unnecessary inconvenience and expense since a stockholder entitled to apply to a court may go to the Circuit Court of Appeals of the circuit in which he resides or has his principal place of business. Thus, it is urged, the Commission might be called upon to answer suits in various circuits. But § 24(a) provides that the Commission may file a transcript of its proceedings in any circuit in which a proceeding has been initiated and thereupon the court in which the transcript is filed shall have exclusive jurisdiction. Thus, if the Commission had here elected to file a transcript in the Circuit Court of Appeals where Florida applied for review, the Circuit Court of Appeals for the First Circuit, in which American's petition was filed, should have transferred that petition to the other court and all the complaints would have been heard by a single court and on the same record.[8]

Second. In No. 815, the court below held the respondent had standing to maintain the proceeding for review of the Commission's order. In this case, Okin, as a stockholder, attacked the transaction made by his company with its subsidiary on the grounds that it was both illegal and fraudulent. His corporation urged that the Commission approve the transaction thus taking a position adverse to him. His application for review of the Commission's order approving the settlement was, therefore, in the nature of a derivative or stockholder's action. Inasmuch as he charged illegality and fraud, it is evident that application to the Board of Directors would have been futile. Under the Com-

[7] Lawrence v. Securities & Exchange Commission, 105 F. 2d 574; Todd v. Securities and Exchange Commission, 137 F. 2d 475; cf. Northwestern Electric Co. v. Federal Power Commission, 321 U. S. 119.

[8] L. J. Marquis & Co. v. Securities and Exchange Commission, 134 F. 2d 335; L. J. Marquis & Co. v. Securities and Exchange Commission, 134 F. 2d 822.

mission's own view, therefore, the Circuit Court of Appeals was right in denying a dismissal of the proceeding for lack of standing on the part of Okin to initiate it. But, as above stated in the decision of No. 470, we do not deem it essential that the proceeding have the character of a derivative suit.

The Commission urges us to hold that the petition on its face presents only frivolous contentions. The court below was unwilling to dismiss on this ground, holding that a more appropriate order would be one of affirmance. It required that the record be filed, as required by the Act, as a condition of consideration of this matter. Apparently it was not satisfied that the filing of an abbreviated transcript furnished a basis for affirmance. The Commission, without inordinate delay or additional expense, might have filed the ~~typewritten~~ transcript of the proceedings before it and obtained the judgment of the court on the adequacy of the petition. We think we are not called upon to examine the merits of the Commission's contentions or to reverse the decision denying the motion to dismiss, or that denying the motion to dismiss or affirm.

In No. 470 the judgment is reversed.

In No. 815 the judgment is affirmed.

Mr. Justice DOUGLAS took no part in the consideration or decision of these cases.

Mr. Justice BLACK and Mr. Justice REED concur in the result in No. 815.

The Court below has discretion to deal with the problem of the necessity of a record, and the extent thereof, in connection with a motion to dismiss or affirm on the ground that the petition for review is frivolous.

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[June 4, 1945.]

Mr. Justice Murphy, dissenting.

Fifteen years ago this Court was confronted with an attempt by a corporate stockholder to set aside an order of the Interstate Commerce Commission on the claim that the order threatened the financial stability of the corporation to which it was directed as well as the "appellant's financial interest as a minority stockholder." The Court, speaking through Mr. Justice Brandeis, held that the stockholder had no standing to maintain the suit since "the order under attack does not deal with the interests of investors" and the only injury feared "is the indirect harm which may result to every stockholder from harm to the corporation." *Pittsburgh & West Virginia Ry. Co.* v. *United States*, 281 U. S. 479, 487. That holding, in my estimation, disposes of this attempt by the American Power & Light Company to obtain an independent judicial review of an order of the Securities and Exchange Commission directed at a company in which it is the sole stockholder.

Section 24(a) of the Public Utility Holding Company Act allows "any person or party aggrieved by an order issued by the Commission" to obtain a review of such order in an appropriate Circuit Court of Appeals. The test, then, is whether American was "aggrieved" by the Commission's order in this instance. Since the term "person or party aggrieved" is not defined in the Act we can only assume that its meaning is to be drawn from

traditional legal principles and from any relevant statutory policies.

Only two paragraphs of the Commission's order are in issue. They are directed solely to the Florida Power & Light Company, all of whose securities are owned by American. These paragraphs fail even to mention American; they neither require nor prohibit any action by it. Nor do they in any way affect American's rights as a stockholder. They simply require Florida to make certain accounting adjustments in the form of charges to earned surplus. Since dividends are paid from earned surplus and since these requirements will decrease the earned surplus account, the Court reasons that "the order has a direct adverse effect upon American as a stockholder entitled to dividends." From this it is concluded that American is "aggrieved" by the order. To that reasoning and conclusion I cannot agree.

1. There is no evidence in the record to justify the assumption that the items to be charged to surplus would necessarily have been available for distribution as dividends to American or that the surplus was otherwise inadequate to pay the normal amount of dividends. Florida might well have retained these items for reinvestment in the business, thus making them unavailable for dividend distribution. Moreover, to the extent that Florida retains these items in its capital structure, American's ultimate equity in the organization is increased. It cannot be said, therefore, that American has been adversely and permanently affected by this order.

2. But even if it were clear that the order would necessarily restrict dividend payments it does not follow that the restraint so directly affects American as to entitle it to challenge the order as a person "aggrieved." It has long been established that ordinarily the mere accumulation of an adequate surplus does not entitle a stockholder to dividends until the directors, in their discretion, declare them. *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330. And until such a declaration is made the directors are free to deal with that surplus in good faith as they may see fit in the exercise of their business judgment, the stockholders not having sufficient interest in undeclared or potential dividends to challenge such action. See *Wabash Ry. Co.* v. *Barclay*, 280 U. S. 197. The stockholders' interest in such matters, in other words, is indistinct

from that of the corporation prior to an actual declaration. Thus if the Florida management had made the same accounting adjustments as those ordered by the Commission in this case American would not be sufficiently "aggrieved" to attempt to prevent Florida from making such adjustments, even though dividend payments might be adversely affected. No adequate reason is evident from the facts or from the opinion of this Court as to why American is any more directly or adversely "aggrieved" when the accounting adjustments are ordered by the Commission rather than by Florida's management or as to why any different results should follow. The impact of the adjustments in either instance is presumably to strengthen the financial structure of Florida; that they may have the incidental effect of decreasing dividends temporarily has never heretofore been sufficient to entitle a stockholder to challenge the adjustments.

3. The fact that American is trying to appeal an administrative order rather than to institute an original action against Florida's management is irrelevant under the circumstances. The Commission's order does not deal with the rights of stockholders as such, in which case a stockholder clearly could appeal from the order. *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80; *Lawless* v. *Securities and Exchange Commission*, 105 F. 2d 574; *New York Trust Company* v. *Securities and Exchange Commission*, 131 F. 2d 274; *City National Bank & Trust Co.* v. *Securities and Exchange Commission*, 134 F. 2d 65. See also *Otis & Co.* v. *Securities and Exchange Commission*, 323 U. S. 624. Nor is there any charge of fraud or breach of duty on the part of Florida, from which it could be argued that American should be given the right to appeal since Florida might not act to protect American's legitimate interests. Indeed, such a possibility is expressly negatived by the fact that Florida has already appealed the Commission's order to another court and is urging precisely the same considerations that American seeks to present in this proceeding. In view of American's complete control of Florida through stock ownership there is no danger of conflicting interests arising between the two companies in the other proceeding. There is thus no basis for concluding that the economic interest asserted by American cannot or will not be adequately protected by Florida. Cf. *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470; *Associated Industries*,

Inc. v. *Ickes*, 134 F. 2d 694, dismissed as moot, 320 U. S. 707. The inevitable logic of the facts of this case leads straight back to the conclusion that American's grievance is only "the indirect harm which may result to every stockholder from harm to the corporation." *Pittsburgh & West. Virginia Ry. Co.* v. *United States*, *supra*, 487. That conclusion calls for a dismissal of American's attempted appeal from the Commission's order just as it would call for a dismissal of any suit brought by American against Florida on these facts.

4. The Court's conclusion here leads only to unfortunate consequences in the judicial review of administrative orders. If the remote economic interest asserted by American is sufficient to institute a review proceeding such as this there is no limit to which minority stockholders may harass the Commission and their respective corporations by challenging orders of the Commission directed to the corporations. It is no answer that Section 24(a) gives exclusive jurisdiction to the court in which the Commission files the transcript of a particular proceeding. That provision clearly envisages two or more appeals in different courts by persons who are legally "aggrieved" by a Commission order and who can obtain adequate relief only by individual appeals. But under this decision stockholders are now free, whenever they feel that their potential dividends are affected by Commission action directed to the corporation's accounting entries against which dividends are charged; to appeal regardless of the management's wishes in the matter and regardless of the management's ability to protect their interests fully and fairly. Stockholders in effect supplant the management in deciding whether to appeal from administrative action affecting such internal accounting procedure of the corporation, a problem which until now was exclusively and properly within the domain of the corporate directors and officers. Many stockholders are not in a position to know the intricacies of modern corporate accounting or the proper attitude to take, from the corporation's point of view, as to the challenged administrative action. But now they have been given carte blanche to proceed as they desire. It is difficult to believe that Congress intended such consequences to flow from its use of the word "aggrieved" in Section 24(a).

Finally, I dissent from the Court's disposition of the writ in the *Okin* case. It is no doubt true, as the Court states, that an

assertion that a transaction approved by the Commission was fraudulently entered into by the corporation is sufficient to entitle the stockholder to an independent review of the Commission's action. But it does not follow that the mere cry of "fraud" is sufficient. There must be some bona fide basis appearing on the face of so serious a charge. Here, however, Okin merely charges that (1) a Maine corporation is not subject to the Commission's jurisdiction because its subsidiaries operate outside the United States; (2) the particular transaction in issue is detrimental to Okin's interests as a stockholder inasmuch as the management extended a note of a subsidiary at a reduced interest rate; (3) various corporate officers held conversations with each other and with members of the Commission's staff; (4) his constitutional rights have been invaded; and (5) the transaction is void for failure to comply with Section 20 of the New York Stock Corporation Law. Such frivolous claims of fraud are insufficient to warrant making an exception to the general rule that a stockholder cannot appeal an administrative order which involves only the corporation as such.

Mr. Justice BLACK and Mr. Justice REED join in that part of this dissent dealing with No. 470, the *American Power & Light Co.* case.